VALORIE LYNN GREAR, and husband
PAUL C. NORDBERG,
Plaintiffs,
v.
GENERAL MOTORS CORPORATION,
KAROL R. VERNON and
VERNBROOK, INC.,
Defendants.

No. 96-2417 GV

United States District Court
for the Western District of Tennessee
Western Division

July 7, 1997

ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF TASK FORCE DOCUMENTS, DENYING DEFENDANT GENERAL MOTORS CORPORATION'S MOTION FOR PROTECTIVE ORDER, AND GRANTING PLAINTIFFS' MOTION TO COMPEL DISCOVERY

VESCOVO, U.S. Magistrate Judge:

Before the court are three discovery motions: (1) plaintiffs' Motion to Compel Production of Task Force Documents, (2) Defendant General Motors Corporation's Motion for Protective Order, and (3) plaintiffs' Motion to Compel Discovery. The motions were referred by District Judge Julia Smith Gibbons to the magistrate judge for determination.

This is an action for personal injuries arising out of an automobile accident that occurred on July 1, 1995. As alleged, plaintiff Valorie Grear was ejected from the driver's side of a 1995 Buick Skylark manufactured by defendant General Motors Corporation ("GM") immediately after colliding with another car. Plaintiffs have sued defendant GM on various theories of strict liability and tort based upon an allegedly defective design of the safety restraint and door-latching systems in GM automobiles. The safety restraint system in the Skylark included door-mounted seatbelts.

Two of the motions to be considered here, plaintiffs' Motion to Compel Production of Task Force Documents and Defendant General Motors' Motion for Protective Order, concern documents relating to GM's Automatic Restraint Task Force ("Task Force"). The Task Force was an internal group of GM engineers created in 1989. Very generally, the Task Force was formed to study the effectiveness of the existing design of door-mounted restraint systems and door-latching mechanisms on GM vehicles. The parties dispute whether the Task Force was created in anticipation of litigation.

On February 10, 1997, plaintiffs served their First Request for Production of Documents ("First Request for Production") on GM. Request No. 11 requested that GM "produce all documents relating to the meetings of and findings, conclusions, and studies of the Ad-Hoc Automatic Restraint Task Force, including, but not limited to, all handwritten notes, reports, studies and other memoranda." In Interrogatory No. 6 of plaintiffs' First Set of Interrogatories served February 7, 1997, plaintiffs requested a privilege log for all documents that GM had not produced either pursuant to initial Rule 26 disclosures or in response to the First Request for Production.

On March 11, 1997, GM submitted its responses to plaintiffs' First Request for Production and First Set of Interrogatories. GM objected to Request No. 11 on the grounds of the attorney-client privilege, work product doctrine, and self-critical analysis doctrine. GM's response made no effort, by privilege log or otherwise, to identify or describe the documents individually or by reasonable category.

As a result, on April 24, 1997, plaintiff filed the instant Motion to Compel Production of Task Force Documents. On April 25, 1997, GM countered by filing its own Motion for Protective Order, which sought to prevent disclosure of the Task Force documents on the basis of the above-mentioned privileges.[1]

On May 2, 1997, GM voluntarily produced to plaintiffs over six hundred documents which it identified as non-privileged Task Force documents.

On or about May 29, 1997, pursuant to the magistrate judge's instruction,[2] GM produced a privilege log identifying the remaining undisclosed Task Force documents. At the same time it produced the privilege log, GM unilaterally submitted a few selected Task Force documents to the magistrate judge for *in camera* inspection.

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[1] On February 11, 1997, plaintiffs served GM with a Rule 30(b)(6) deposition notice. The notice instructed deponent in subparts 9 and 16 to bring certain Task Force documents to the deposition. GM's motion for protective order encompasses subparts 9 and 16 in the notice as well as Request #11.

[2] The magistrate judge discussed the status of the discovery dispute over the Task Force documents with counsel for both parties at a settlement conference held on May 23, 1997.

The third motion in question, plaintiff's Motion to Compel Discovery, filed May 6, 1997, seeks to compel production of documents and other materials regarding similar accidents, crash tests, lawsuits and complaints requested in plaintiffs' First Request for Production. GM objections to production on various grounds of irrelevance, burdensomeness and privilege.

The court will first consider the question of the Task Force documents and then treat plaintiffs' May 6, 1997 Motion to Compel Discovery.

I.

The threshold issue raised is whether defendant GM has waived its asserted privileges with respect to the Task Force documents for failure to properly and timely describe the documents. Fed.R.Civ.Proc. 26(b)(5) clearly provides:

> When any party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Fed.R.Civ.Proc. 26(b)(5). As the Comment to Rule 26 notes, to withhold discoverable material without proper notification "is contrary to the rule, subjects the party to sanctions under Rule 37(b)(2), and may be viewed as a waiver of the privilege

or protection." Fed.R.Civ.Proc. 26(b)(5) (Advisory Committee Notes, 1993 Amendments).

In this vein, a "blanket objection" to discovery on grounds of privilege grounds [sic] is clearly contrary to Rule 26. "Whether a responding party states a general objection to an entire discovery document on the basis of privilege, or generally asserts a privilege objection within an individual discovery response, the resulting "blanket objection" is decidedly improper. This fact should no longer be "news" to a responding party." *Eureka Financial Corp. v. Hartford Accident & Indemnity Co.*, 136 F.R.D. 179, 182 (E.D. Calif. 1991) (citations omitted).

Plaintiffs cite a recent unpublished ruling from a similar case in the Eastern District of Arkansas, *Baranowski v. General Motors, et al.*, Docket No. LR-C-96-222. In the *Baranowski*, case, plaintiff was ejected from a GM car following a collision. In her May 15, 1997 Memorandum and Order, United States District Judge Susan Webber Wright ordered GM to produce its Task Force documents, which are the same Task Force documents at issue in this case. Judge Wright found, in part, that GM waived any privilege claim on the Task Force documents by failing to make any reasonable effort to identify the documents. While the Memorandum and Order in *Baranowski* is not binding here, the court considers its ruling on the issue of waiver to be persuasive.

In this case, the Task Force documents are clearly relevant to plaintiffs' claims and thus "otherwise discoverable." Therefore, GM was required, under Rule 26(b)(5), to describe the documents it withheld as privileged. GM first failed to provide identifying information on the documents as part of its initial disclosures under Rule 26. GM then totally failed to include a privilege log, or a reasonable equivalent, in its responses to the request for production. Almost two months

later, GM produced a portion of the Task Force documents which it had previously withheld as privileged, yet it again failed to identify the other withheld documents to enable plaintiffs to assess the claims of privilege. Even after receiving Judge Wright's ruling which clearly communicated to defendants the requirements of a privilege log or equivalent description of withheld documents under Fed.R.Civ.Proc. 26(b)(5), GM still failed to produce a privilege log. The only reason GM finally produced a privilege log is that it was instructed to do so by the magistrate judge. GM offers no valid reason for not timely identifying the Task Force documents claimed as privileged. Instead, the court finds persistent delay by GM with respect to identification of these documents and, therefore, a willful disregard for the notification requirements of Rule 26.

These failures are not corrected by GM's submission of documents for *in camera* scrutiny by the court. *See* 8 Wright, Miller & Marcus, *Federal Practice and Procedure*: Civil 2d §2016.1 (2d ed. 1994). To the contrary, the magistrate judge specifically told counsel for GM she was not interested in conducting an *in camera* inspection of Task Force documents at this time and that such may not be necessary at all if an appropriate privilege log was filed and sufficiently described the withheld documents. The court has not reviewed the documents submitted for an *in camera* inspection and declines to do so.

Therefore, under these circumstances, this court finds that defendant GM's failure to list the Task Force documents or otherwise make a timely or reasonable effort to identify those documents in its Rule 26(a)(1) disclosures and in response to specific discovery requests resulted in a waiver of the claimed privileges. Accordingly, defendant GM is ordered to produce the Task Force documents requested in plaintiff's Request for Production No. 11.

For these reasons, plaintiffs' Motion to Compel Production of Task Force Documents is granted and defendant General Motors' Motion for Protective Order is denied. GM is directed to produce the Task Force documents by July 15, 1997.

II.

Plaintiffs' Motion to Compel Discovery of May 6, 1997, alleged GM's refusal to produce documents and other materials in response to the Requests No. 2, No. 3, No. 9 f., g, and j.-p., No. 10, and No. 20 in plaintiffs' First Request for Production.

Plaintiff reports in its reply brief that after the motion to compel was filed, GM agreed to produce the following documents in partial satisfaction of the disputed requests:

> 1) Reports concerning an accident that caused a front door to come open or door latch mechanism failure involving 1992-1997 N-car sedans (Pontiac Grand Am, Buick Skylarks, and Oldsmobile Calais);
>
> 2) Certain 1241 reports, CPIR's (Collision Performance Injury Reports) and other incident reports containing information relevant to door-mounted passive belt systems in 1992-1996 N-car sedans or mini-wedge door latches in 1990-1997 N-car sedans; and,
>
> 3) Copies of reports and videotapes of crash tests, if any are found, relating to door or latch openings on full scale crash tests of vehicles utilizing the mini-wedge latch.

Regarding the above documents which GM has agreed to produce, plaintiffs request that defendant be ordered to produce them immediately.

With respect to the rest of the disputed document requests, it appears that plaintiffs' motion can be effectively resolved by addressing three areas of discovery: CPIR documents, crash test documentation, and documentation for GM vehicles other than 1992-1997 N-car vehicles.

Plaintiffs' Requests No. 9 and 10 seek certain CPIR documents. According to the affidavit of plaintiffs' expert engineer, Ed Kerr, which was filed in support of this motion, it is feasible to produce CPIR's for "side door opening" events. In an effort to minimize the burden on GM, plaintiffs propose to limit CPIR's to "side door opening" events. Thus, defendant GM is ordered to produce CPIR's, as requested in the disputed discovery requests, to the extent of CPIR's created for "side door opening" events.

Plaintiffs' Request No. 3 requested video tapes of any crash tests in which the mini-wedge door locking system failed. Defendant complained that this was an unduly burdensome request because of the large number of video tapes to be reviewed. As an alternative to their original request, plaintiffs propose that the same information be retrieved from GM's crash test database. The court finds that plaintiffs' alternative request would be less burdensome. Thus, defendant GM is ordered to produce a report from its crash test database on all crash tests involving vehicles containing the mini-wedge latch, indicating the total count of such tests performed. The report must include as many pieces of information that the database contains with respect to each crash test, including whether exterior doors remained closed and/or latched.

Finally, GM argues that plaintiffs' discovery should be restricted to documentation of failed door-mounted restraint systems on N-car sedans manufactured in 1992 through 1996. The court finds that documents indicating a failure or defect of the same safety restraint system and mini-wedge door latch involved in this case are relevant and discoverable whether it was in an N-car or other GM vehicle. GM's brief states that the mini-wedge latch has been used in GM cars dating from the 1990 model year. The court therefore orders defendant GM to produce the pertinent information sought as to lawsuits, complaints, reports and tests in Requests No. 2 and 3, to the extent such information has not already been produced, for all GM vehicles manufactured since the 1990 model year, not limited to N-cars.

For the above reasons, plaintiff's Motion to Compel Discovery is granted. GM is directed to produce the documents indicated in this order by July 15, 1997.

IT IS SO ORDERED.

_____

DIANE K. VESCOVO
U.S. MAGISTRATE JUDGE

DATE:_____

VALORIE LYNN GREAR and husband,
PAUL C. NORDBERG,
Plaintiffs,
v.
GENERAL MOTORS CORPORATION,
Defendant.

No. 96-2417-G/V

United States District Court
for the Western District of Tennessee
Western Division

August 1, 1997

GIBBONS, District Judge:

Before the court are defendant General Motors Corporation's objections to the order of the United States Magistrate Judge entered July 8, 1997. The court has reviewed defendant's objections, plaintiffs' response and the entire record pertaining to this matter. The magistrate judge's ruling is not clearly erroneous or contrary to law. It is therefore affirmed. Defendant is ordered to produce all of the documents covered by the order, no later than August 8, 1997.

IT IS SO ORDERED.

JULIA SMITH GIBBONS
U.S. DISTRICT JUDGE

DATE

VALORIE LYNN GREAR, and husband
PAUL C. NORDBERG,
Plaintiffs,
v.
GENERAL MOTORS CORPORATION,
KAROL R. VERNON, and
VERNBROOK, INC.,
Defendants.

No. 96-2417-G

United States District Court
for the Western District of Tennessee
Western Division

August 8, 1997

ORDER DENYING STAY AND
EXTENDING TIME FOR DOCUMENT PRODUCTION

GIBBONS, District Judge:

Before the court is defendant General Motors Corporation's motion for emergency stay of this court's August 1, 1997 order. The court denies the motion for stay. Any stay of this court's order will have to be obtained from the United States Court of Appeals for the Sixth Circuit. The court will extend the time for production of the documents covered by its order until August 15, 1997.

IT IS SO ORDERED.

JULIA SMITH GIBBONS
UNITED STATES DISTRICT JUDGE

DATE

VALORIE LYNN GREAR, and husband,
PAUL C. HORDBERG,
Plaintiffs-Appellees,
v.
GENERAL MOTORS CORPORATION,
Defendant-Appellant,
CAROL R. VERNON; VERNBROOK, INC.
Defendants.

No. 97-5968

IN RE GENERAL MOTORS CORPORATION,
Petitioner.

No. 97-5989

United States Court of Appeals
for the Sixth Circuit

August 13, 1997

ORDER

ENTERED BY ORDER OF THE COURT:

In this diversity products liability action, the district court granted the plaintiffs' motion to compel the production of a ten-page memorandum that defendant General Motors Corporation ("GM") asserts is protected from disclosure by the attorney-client privilege and the work-product privilege. The district court found that GM waived any privilege it may have had and ordered the document produced by August 8, 1997. GM filed a notice of appeal from the ruling (Case No. 97-5968) and also petitions this court for a writ of mandamus (Case No.

97-5989). GM seeks a stay of the order directing production pending a determination of the appeal and the petition for a writ of mandamus. The district court denied GM's motion for a stay pending appeal, but extended the time for production of the document to August 15, 1997. GM also seeks leave to file a copy of the document under seal in this court.

Due to the exigent nature of the relief requested, this matter is being initially referred to a single judge of the court. *See* Fed. R. App. P. 8A(a). The production of the document by GM will be stayed temporarily to permit consideration of the issues raised by a three-judge panel of the court. The plaintiffs are directed to file a response to the emergency motion for a stay and to the petition for a writ of mandamus by August 22, 1997. The court's appellate jurisdiction should also be addressed by the plaintiffs.

It therefore is ORDERED that the order directing GM to produce the ten-page memorandum is stayed pending further order of the court. GM's motion to file a copy of the document under seal is granted.

ENTERED BY ORDER OF THE COURT

_____

Leonard Green, Clerk

VALORIE LYNN GREAR, and husband,
PAUL C. HORDBERG,
Plaintiffs-Appellees,
v.
GENERAL MOTORS CORPORATION,
Defendant-Appellant,
CAROL R. VERNON; VERNBROOK, INC.
Defendants.

No. 97-5968

United States Court of Appeals
for the Sixth Circuit

September 17, 1997

ORDER

KENNEDY, GUY, and SILER, Circuit Judges:

In this diversity products liability action, the district court granted the plaintiffs' motion to compel the production of a ten-page memorandum that defendant General Motors Corporation ("GM") asserts is protected from disclosure by the attorney-client privilege and the work-product doctrine. The district court found that GM waived any privilege it may have had and ordered the document produced. GM filed this appeal form the discovery ruling and also sought review in mandamus. GM moved for a stay of the production of the document pending its appeal and pending consideration of the petition for a writ of mandamus. On August 13, 1997, the court granted a temporary stay of production to facilitate consideration of the issues by a three-judge panel of the court. The matter is before the court to consider the plaintiffs' motion to dismiss the

appeal for lack of jurisdiction and GM's motion for a stay pending appeal. GM opposes the motion to dismiss; the plaintiffs oppose the motion for stay.

This court has jurisdiction of appeals from final orders of the district court. 28 U.S.C. § 1291. The district court's discovery ruling is not the final district court order in this litigation. GM maintains, however, that the ruling should be appealable as a collateral order. This court has consistently held that "orders denying or granting discovery are not appealable under the collateral order doctrine." *Coleman v. American Red Cross*, 979 F.2d 1135, 1138 (6th Cir. 1992); *see Federal Deposit Ins. Corp. v. Ernst & Whinney*, 921 F.2d 83, 85 (6th Cir. 1990); *Dow Chemical Co. v. Taylor*, 519 F.2d 352, 354-55 (6th Cir. 1975). If a party seeks an immediate appeal of the matter, the party should submit to contempt and then appeal the contempt ruling. *See United States v. James T. Barnes & Co.*, 758 F.2d 146 (6th Cir. 1985) (order). Although the Third Circuit recently concluded in *In re Ford Motor Co.*, 110 F.3d 954 (3d Cir. 1997), that a district court ruling ordering production of documents claimed to be privileged under the attorney-client and work-product doctrine was an appealable collateral order, we decline to adopt the reasoning of that case.

It therefore is ORDERED that the motion to dismiss is granted. The temporary stay issued by the court on August 13, 1997, is dissolved. GM's motion for a stay of the production of the document pending appeal is denied as moot.

ENTERED BY ORDER OF THE COURT

Leonard Green, Clerk

IN RE GENERAL MOTORS CORPORATION,
Petitioner.

No. 97-5989

United States Court of Appeals
for the Sixth Circuit

September 17, 1997

ORDER

KENNEDY, GUY, and SILER, Circuit Judges:

In this diversity products liability action, the district court granted the plaintiffs' motion to compel the production of a ten-page memorandum that defendant General Motors Corporation ("GM") asserts is protected from disclosure by the attorney-client privilege and the work-product doctrine. The district court found that GM waived any privilege it may have had and ordered the document produced. GM petitions for a writ of mandamus directing the district court to vacate the order requiring production of the document. GM moved for a stay of production pending consideration of its mandamus petition and of its appeal from the order. On August 13, 1997, the court issued a temporary stay of the district court's ruling. The plaintiffs oppose the petition for a writ of mandamus and the motion for a stay.

A party seeking mandamus must have no other means of obtaining the relief he desires and must demonstrate a "clear and indisputable" right to that relief. *Kerr v. United States District Court*, 426 U.S. 364, 402 (1976). GM argues that a direct appeal of the privilege issue following disclosure of document and entry of final judgment is inadequate. Although a direct appeal following final judgment is an inadequate

remedy, GM can obtain appellate review by submitting to contempt and appealing the contempt ruling. *See United States v. James T. Barnes & Co.*, 758 F.2d 146 (6th Cir. 1985) (order); *Dow Chemical Co. v. Taylor*, 519 F.2d 352, 354-55 (6th Cir. 1975).

It therefore is ORDERED that the petition for a writ of mandamus is denied. The August 13, 1997, temporary stay is dissolved, and the motion for stay pending review is denied as moot.

ENTERED BY ORDER OF THE COURT

Leonard Green, Clerk

VALORIE LYNN GREAR, and husband,
PAUL C. HORDBERG,
Plaintiffs-Appellees,
v.
GENERAL MOTORS CORPORATION,
Defendant-Appellant,
CAROL R. VERNON; VERNBROOK, INC.,
Defendants.
IN RE GENERAL MOTORS CORPORATION,
Petitioner.

Nos. 97-5968 & 97-5989

United States Court of Appeals
for the Sixth Circuit

October 13, 1997

ORDER

KENNEDY, GUY, and SILER, Circuit Judges:

In this diversity products liability action, the district court granted the plaintiffs' motion to compel the production of a ten-page memorandum that defendant General Motors Corporation ("GM") asserts is protected from disclosure by the attorney-client privilege and the work-product doctrine. GM filed an appeal from the discovery ruling and also sought review in mandamus. On September 17, 1997, the court dismissed the appeal for lack of jurisdiction and denied the petition for writ of mandamus.

GM now seeks an emergency stay of the mandate for thirty days to permit the filing of a petition for writ of certiorari in the Supreme Court. In addition, GM seeks a stay of the

production of the document pending review by the Supreme Court. We conclude that the issuance of the mandate should be stayed for thirty days. *See* Sixth Circuit Rule 15. In addition, we will stay the production of the disputed document for a thirty-day period to permit GM to file a motion for a stay in the Supreme Court. If such a motion is filed, the stay will continue until the Supreme Court disposes of the stay motion.

It therefore is ORDERED that the mandate is stay [sic] for a period of thirty-days in order to permit the filing of a petition for writ of certiorari. The production of the document by GM is stayed for thirty days to permit the filing of a motion for a stay in the Supreme Court. If a stay motion is filed within thirty days, the production of the document will be stayed pending the disposition of the motion for a stay by the Supreme Court.

ENTERED BY ORDER OF THE COURT

_____

Leonard Green, Clerk

VALORIE LYNN GREAR, and husband,
PAUL C. NORDBERG,
Plaintiffs,
v.
GENERAL MOTORS CORPORATION,
KAROL R. VERNON, and
VERNBROOK, INC.
Defendants.

No. 96-2417-G

United States District Court
for the Western District of Tennessee
Western Division

May 14, 1997 (Submitted)
May 15, 1997 (Filed)

SUBMISSION OF AFFIDAVIT OF JAMES A. DURKIN

COMES NOW, General Motors Corporation ("GM") and submits the attached Affidavit of James A. Durkin in support of Defendant General Motors Corporation's Motion for Protective Order in the above-referenced case.

Respectfully submitted,

R. CHRIS HARVEY
State Bar No. 09181000
ROSS T. ROBINSON
State Bar No. 00788300
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ATTORNEYS FOR DEFENDANT
GENERAL MOTORS CORP.

CERTIFICATE OF SERVICE

This is to certify that a true and correct of the foregoing document has been forwarded via certified mail, return receipt requested to all counsel of record on this 14th day of May, 1997.

_____

ROSS T. ROBINSON

VALORIE LYNN GREAR, and husband,
PAUL C. NORDBERG,
Plaintiffs,
v.
GENERAL MOTORS CORPORATION,
KAROL R. VERNON, and
VERNBROOK, INC.
Defendants.

No. 96-2417-G

United States District Court
Western District of Tennessee
Western Division

May 13, 1997

AFFIDAVIT OF JAMES A. DURKIN

I, JAMES A. DURKIN, after first being duly sworn, state the following in support of General Motors' claims of privilege as related to its production of documents in this litigation.

1. I give this affidavit in support of General Motors Corporation's claims of privilege over documents that should be exempted from production. I have personal knowledge of the matters stated herein and am competent to testify thereto.

2. I am an attorney licensed to practice law in the State of Michigan and am currently a member of the General Motors Corporation ("GM") Legal Staff. I have been a member of GM Legal Staff since 1965.

3. From May 1987 to July 1990, I served as the legal advisor to General Motors' General Technical Committee (GTC). In that position, I provided members of the GTC with legal advice and related information to assist Committee members in making decisions in the performance of their Committee and corporate duties.

December 12, 1989 Memorandum:

4. On November 17, 1989, at a meeting of the GTC, I made a request for technical assistance in anticipation of litigation against General Motors regarding door-mounted restraint systems. More specifically, I sought the assistance of knowledgeable engineers to support Legal Staff in its effort to provide legal advice to GM regarding the defensibility of its passive restraint systems and the potential for claims alleging defects in such systems as installed in variety of GM vehicles. To further GM's defense efforts in these cases, and to facilitate the rendition of professional legal services to General Motors, I concluded that I, as well as other members of the Legal Staff, needed assistance that could be provided by knowledgeable GM engineers.

5. My request for assistance was initially made orally to the GTC and then communicated in writing in a confidential December 12, 1989 memo from me to Edward W. Hufnagle, the Chairman of the GTC's Body Subcommittee, and Albert R. Bernat and John G. Haviland, the Co-Chairmen of the GTC's Occupant Protection Safety System Subcommittee. (*See* December 12, 1989 memorandum at Bates Nos. 002783-84). Each of these three persons had the authority, within the scope of his duties as a GM employee, to identify and assign GM engineers and other GM employees to provide assistance to me and other members of the Legal Staff as requested.

6. My December 12 memo was copied to certain members of the GTC, including Ronald H. Haas, Arvin F. Mueller, Donald J. Runkle, Thomas J. Davis, Robert L. Dorn, Roger W. Masch and to certain GM Legal Staff attorneys, including Harry J. Pearce, GM's General Counsel, George F. Ball, Douglas E. Brown, Dennis R. Minano and Gary Toth. My memorandum was so distributed because it was my belief that each of these individuals needed to be aware of the assistance I was seeking, both to accommodate the new time demands that would be placed on task force engineers and to benefit from the information that would be gained. I anticipated that my memorandum would remain "privileged and confidential" and labeled it accordingly.

7. In my December 12 memo, I specifically advised the addressees that all work done pursuant to my request for assistance should be considered "confidential" and protected by the attorney-client privilege and the attorney work-product exemption. I further advised the addressees that the records or reports generated by any advising engineer should be treated as confidential and communicated only to the attorneys responsible for providing GM with advice or defending GM in related litigation.

8. As the result of my request for technical assistance, the Automatic Restraint Task Force (the "Task Force") was created. Robert Sinke served as the Task Force Chairman and Gary Toth, a member of GM Legal Staff, served as one of the Task Force's principal legal advisors. The Task Force consisted of approximately ten General Motors engineers.

9. The purpose of the Task Force was to provide the Legal Staff with information and engineering evaluations on the technical issues raised in connection with anticipated litigation against General Motors. As noted above, the purpose

of these communications was to enable me and other members of the Legal Staff to provide legal advice to General Motors and to prepare for the defense of anticipated litigation.

April 23, 1990 Memorandum:

10. In connection with my continuing role as legal advisor to the General Technical Committee, I asked Gary Toth and Doug Brown, both members of GM's Legal Staff, to prepare a memorandum analyzing available technical information related to the use of automatic belt systems.

11. Pursuant to my request, Mr. Toth and Mr. Brown prepared a memorandum on the requested issues which contained their thoughts and mental impressions as attorneys representing the interests of General Motors. The memorandum was prepared with the anticipation that it would remain confidential and be used solely to provide legal advice to the GTC and to defend litigation claims against General Motors. A copy of Mr. Toth and Mr. Brown's memorandum, including all attachments, can be found at Bates Nos. 284034-50.

12. To properly advise the GTC, I concluded that it was important that certain GTC members understand the potential legal implications of the comparative analyses contained in the confidential memorandum. I therefore forwarded a copy of the confidential memorandum to certain members of the GTC, including Donald L. Runkle, a GM Vice-President and Chairman of the GTC; Ronald H. Haas, a GM Vice-President in Current Engineering and Betsy Ancker-Johnson, a GM Vice-President in Environmental Activities. I also forwarded a copy of the memorandum to Albert R. Bernat and John G. Haviland, Co-Chairmen of the GTC's Occupant Protection Safety System Subcommittee, and Robert A. Rogers, Director of Automotive Safety Engineering, who had general oversight responsibility on safety matters. Finally, a

copy of the memorandum was forwarded to Robert A. Sinke, the Chairman of the Automatic Restraint Task Force. A copy of my memorandum directing this distribution can be found at Bates No. 284033.

13. The confidential memorandum was circulated to these individuals for the purpose of providing them with the underlying analysis for the legal advice I had provided to them in their respective capacities in connection with the GTC, the senior technical committee that was responsible for advising the Corporation on technical issues. The memorandum was forwarded with the expectation that it would be kept confidential and used by these persons only in connection with the implementation of legal advice or in the defense of General Motors in anticipated litigation.

14. A true and correct copy of each of the documents referenced in this affidavit will be provided to the Court for *in camera* review.

FURTHER AFFIANT SAYETH NOT.

_____
James A. Durkin

Subscribed and sworn to before me this ____ day of _____, 1997.

_____
Notary Pubic